

Superfund Report

Exclusive coverage of waste management and cleanup regulation, legislation and policies

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NOAA MOVES AHEAD WITH COOPERATIVE NRD APPROACH AT SUPERFUND SITES

A coalition of federal agencies, led by the National Oceanic and Atmospheric Administration (NOAA), is moving forward to develop a framework to encourage greater cooperation between the government and industry in handling natural resource damage (NRD) claims at Superfund sites by establishing a stakeholder group to address the issue.

NOAA has been meeting with various stakeholder groups since last year, but just recently developed a formal review group to establish a protocol for handling NRD claims, emphasizing negotiation between potentially responsible parties (PRP) and natural resource trustees in order to reduce litigation. The workgroup includes: officials from NOAA, the Department of Interior and the Department of Justice (DOJ); tribal representatives; industry representatives; officials from the states of California, Illinois and New Jersey; along with environmental groups, such as the Natural Resources Defense Fund.

The stakeholder group is currently developing a variety of documents to ensure that restoration is properly managed and funded, including a Memorandum of Understanding and a funding agreement. The parties would be required to enter into a settlement agreement to resolve any uncertainties about future liability. The group will also produce documents that will explain what assessment methods and restoration techniques should be applied at these sites. Drafts of these documents should be completed by September, a NOAA source says.

The effort, known as the Cooperative Assessment Pilot Project (CAPP), would involve PRPs in the planning and implementation of damage assessment and restoration at contaminated sites as a means to avoid conflicts and eventual litigation in order to expedite the cleanup process. The CAPP group has had several meetings with the last coming in May. Stakeholders are now considering possible sites for pilot projects, which will be discussed during the group's next meeting in September.

Specifically, the effort would give PRPs the responsibility for identifying, assessing and restoring natural resource injuries, while giving trustees oversight authority. In turn, PRPs would receive relief from Superfund liability. Under cooperative agreements, PRPs and trustees would have varying levels of responsibility at each site, ranging from trustees doing all the work while keeping PRPs apprised of the progress to PRPs being fully responsible with trustees only providing oversight.

According to a NOAA source, CAPP "institutionalizes our current practices" in handling NRD claims. Up to now, any efforts to avoid litigation and reach a quick settlement at these sites by involving PRPs in the process has been purely *ad hoc*, requiring NOAA and other trustees to "reinvent the wheel" at each new site, the source says. The CAPP program would allow trustees to have a formal policy to turn to at each and every site.

The NOAA source says the agency has worked with EPA "on an *ad hoc* basis" to promote cooperative approaches to NRD work and has approached EPA about the CAPP project. Working with the agency would be beneficial in order to ensure a streamlined approach to NRD at Superfund sites where both agencies' jurisdictions intersect, a DOJ source adds. "A big part of this would be to add to the remedial process," the source says, to save extra study time and restoration efforts by pooling the agencies' efforts.

While the agency has yet to become formally involved, an EPA source says the agency has "been trying to [ensure a cooperative process] for a while." "We'd be receptive to that effort," the source says.

Thus far the project has garnered support from a wide range of groups as a productive step to cutting back on litigation in NRD cases. Calling the effort a "good government initiative," an insurance industry source says the plan to involve PRPs will "cut to the chase," avoiding lawsuits by "trying to get all stakeholders in the same room" to work out a compromise.

The DOJ source agrees, saying that the effort is "a great idea, if it works, if industry is willing to engage in cooperative efforts." And environmentalists are initially supportive of the idea. One such source says that "an adversarial process costs a lot of time and money" which could be saved by coming to an early compromise.

But environmentalists say that in order for the process to be effective there must be sufficient oversight of PRP restoration activities. One source says that trustee agencies must conduct the scientific research needed to determine what restoration activities are necessary, not industry. And activists want there to be sufficient provisions for public involvement in the NRD process, the source says.